

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1, 4-26, 28-36 are pending in the application, with claims 1, 19, 20, and 31 being the independent claims. Claim 27 is sought to be cancelled without prejudice to or disclaimer of the subject matter therein. New claims 29-36 are sought to be added. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Personal Examiner Interview of March 30, 2010

Applicants wish to thank Examiner Tatyana Zalukaeva and Examiner Ilya Treyger for taking the time to interview this matter with Applicants' representatives, Anbar Khal and Jeff Fougere, on March 30, 2010. During that interview, Applicants' representatives pointed out differences between the invention and the applied references. Applicants offer the following additional remarks, which among other things incorporate the substance of Applicants' representatives discussion with the Examiner during the interview. Entry of the above amendments and allowance of the present application is respectfully requested.

Rejections under 35 U.S.C. § 103

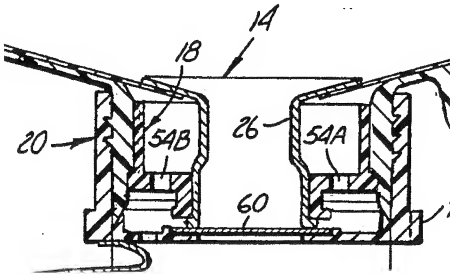
Independent claims 1 and 19 and dependent claims 4, 5, 13-18, 25 and 26

Claims 1, 4, 5, 13-19, 25 and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,102,010 to Osgar et al. ("Osgar") in view of U.S. Patent No. 4,976,707 to Bodicky et al. ("Bodicky"). As discussed previously in the Amendment and Reply submitted July 31, 2009, Applicants respectfully disagree that Osgar and Bodicky, either alone or in combination, disclose or render obvious the recited weld seam of substantially T or substantially V shaped seam as recited in independent claims 1 and 19. Moreover, as further discussed below, present independent claims 1 and 19 recite additional features that distinguish over the cited references.

Independent claim 1 and dependent claims 5, 13-18 and 29

Claim 1 has been amended to recite a flange that is "a monolithic structure including said pierceable membrane and said guide passage." Support for this amendment is provided, for example, in FIG. 4 of the present application. Osgar does not disclose this feature. In the Office Action, the Examiner appears to acknowledge that the pierceable membrane 60 and flange 14 of Osgar are two pieces, alleging that it would have been obvious to make the membrane integral with the flange because "forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art." Office Action, pages 2-3. Applicants respectfully disagree with the Examiner's assertions and contentions.

As discussed during the Examiner Interview, Osgar does not appear to disclose that the pierceable membrane 60 is part of the flange 14. Rather, Osgar merely discloses that the fitment 14 includes a mouth 22, a lip 24 at its upper end, an intermediate neck 26, and a flange 28. *See* col. 3, lns. 37-41 of Osgar. Osgar discloses that a cap 20 is designed to be screwed down onto bottle 16 with a predetermined torque to ensure a liquid and air-tight seal between fitment 14 and membrane 60, thus suggesting that membrane 60 is part of the cap and covers mouth 22 of fitment 14 when cap 20 is screwed down onto bottle 16. *See* col. 4, lns 11-23 of Osgar. Moreover, in the figures of Osgar, pierceable membrane 60 extends beyond fitment 14, with the membrane being part of the cap 20 and not part of the fitment. For example, shown below is a zoomed-in portion of FIG. 10 of Osgar, in which membrane 60 is shown as being attached to ledges on the underside of cap 20:



Thus, Osgar does not disclose or suggest a flange that is a monolithic structure including the membrane. Bodicky, which was cited by the Examiner for allegedly disclosing a welded seam of a V-shaped configuration, does not cure the deficiencies of Osgar. Moreover, assuming, *arguendo*, it would have been obvious to form in one piece an article which has formerly been formed in two pieces and put together, as alleged by the Examiner, Osgar would at minimum suggest to combine membrane 60 and cap 20 into one piece, and not membrane 60 and fitment 14.

In determining whether a claimed invention is obvious over a combination of art, the following basic factual inquiries must be resolved: "the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved." *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17 (1966). These so-called "Graham factors" were reaffirmed by the Supreme Court in its consideration and determination of obviousness in *KSR International Co. vs. Teleflex, Inc.*, 127 S.Ct. 1727, 1734 (2007). "Factual findings made by Office personnel are the necessary underpinnings to establish obviousness." MPEP 2141(II) (Sept. 2007). Once the findings of fact (*i.e.*, the Graham factors) are articulated (as well as secondary considerations when present), the Examiner must provide an explanation or rationale to support the obviousness rejection. *Id.* The Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. § 103 should be made *explicit*, and that it was "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR* at 1741. Finally, *KSR* did not remove the well-established legal requirement that each element of each claim must be taught in the cited

documents or known as common knowledge. *See In re Vaeck*, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991); *see also* MPEP § 706.02(j).

Osgar and Bodicky do not teach each and every element of the present independent claim 1. Moreover, the Examiner has not provided any explanation or rationale that would have prompted a person of ordinary skill in the relevant field to modify Osgar to include a flange that is a monolithic structure including the pierceable membrane and the guide passage, as recited in present claim 1. Accordingly, the Examiner has not shown the claimed invention is obvious under KSR, and these claims cannot therefore be obvious under 35 U.S.C. 103(a) in view of Osgar and Bodicky.

For at least the foregoing reasons, claim 1, and claims 5 and 13-18, which depend from claim 1, as well as new claim 29, which also depends from claim 1, are patentable over Osgar and Bodicky. Applicants thus respectfully request that the Examiner reconsider and withdraw the rejections of claims 1, 5 and 13-18, and allow new claim 29.

Dependent claim 4

Present claim 4 depends from claim 1; therefore, this claim is patentable for at least the same reasons as discussed above with respect to claim 1. Moreover, claim 4 has been amended to recite a guide passage that includes "an end portion that extends into an interior chamber of said foil bag, and wherein said pierceable membrane is disposed at an end of or within said end portion." Support for this amendment is provided, for example, in FIG. 4 and paragraph [0086] of the published application.

Osgar does not disclose an end portion of guide passage that extends into the interior chamber of the bag. Osgar also does not disclose a pierceable membrane that is disposed at an end of or within the end portion. The Examiner asserts that Osgar discloses a flange 14 sealed to a foil bag 12, with a passage through the flange, and a pierceable membrane 60 at an end of the passage. *See* Office Action, page 5. However, as shown in FIG. 3 of Osgar, the neck 26 of fitment 14 does not extend *into the interior chamber* of bag 12. Rather, neck 26 *extends outwardly* from the end of bag 12. Consequently, the pierceable membrane 60 of Osgar, which covers the mouth 22 of fitment 14, does not constitute a pierceable membrane that is disposed at or within *an end portion that extends into an interior chamber*, as provided by present claim 4. Bodicky, which was cited by the Examiner for allegedly disclosing a welded seam of a V-shaped configuration, does not cure these deficiencies of Osgar. For at least the foregoing reasons, Applicants respectfully request that the rejection of claim 4 be reconsidered and withdrawn.

Independent claim 19

Present claim 19 has been amended to recite that a portion of a guide passage has a press fit and that a pierceable membrane is "arranged between said press fit of said guide passage and an interior chamber of said foil bag." Support for this amendment is provided, for example, in FIG. 7 and in paragraphs [0074] and [0086] of the published application. For example, as shown in the embodiment of FIG. 7, a press fit is formed by ridges 77 in guide passage 76, and a pierceable membrane 78 is provided in the proximity of the lower end of guide passage 76, between the ridges 77 and the interior chamber of the bag 73.

Osgar does not disclose a pierceable membrane arranged between a press fit and an interior chamber of the bag, as recited in present claim 19. The Examiner alleges that Osgar discloses a press fit 24 in FIG. 4B. See Office Action, page 7. Applicants respectfully disagree. The alleged press fit 24 is a lip 24 at the mouth 22 of fitment 14. Osgar does not disclose lip 24 as forming a press fit with a discharge connection member. Moreover, assuming, *arguendo*, that lip 24 is a press fit, then pierceable membrane 60 is disposed at mouth 22, *at the alleged press fit 24*. Also, even assuming, *arguendo*, that a press fit exists elsewhere along the neck 26 of fitment 14, then pierceable membrane 60 at mouth 22 would be *above* any press fit and the interior chamber of the bag. Osgar therefore does not disclose a pierceable membrane arranged *between* a press fit and the interior chamber of the bag, as claimed. Moreover, the Examiner has not provided any explanation or rationale that would have prompted a person of ordinary skill in the relevant field to modify Osgar to arrive at the presently claim invention.

Bodicky does not cure the deficiencies of Osgar with respect to claim 19. Establishment of a *prima facie* case of obviousness requires that the Examiner factually show that the references in combination disclose *all* of the elements of the claims in their proper function, as well as provide a reasoned articulation that the combination of elements would have been known to produce a predictable result. In the present case, this burden has not been met. For at least the foregoing reasons, independent claim 19 is patentable over Osgar and Bodicky. Applicants respectfully request the rejection be withdrawn and the claim allowed.

Dependent Claims 25 and 26

Present claim 25 depends from claim 19; therefore, this claim is patentable for at least the same reasons as discussed above with respect to claim 19. Claim 26 has been amended to depend from claim 20; therefore, this claim is patentable for at least the same reasons as discussed below with respect to claim 20. Moreover, present claims 25 and 26 recite a guide passage that includes an end portion that extends into an interior chamber of said foil bag, and wherein said pierceable membrane is disposed at an end of or within said end portion. As discussed above with respect to present dependent claim 4, Osgar does not disclose these features. In Osgar, the neck 26 of fitment 14 *extends outwardly* from the end of bag 12, and the pierceable membrane 60 covers the mouth 22 of fitment 14. Osgar does not disclose a pierceable membrane that is disposed at or within an end portion that *extends into an interior chamber* of the bag, as provided by present claims 25 and 26. Bodicky does not cure these deficiencies of Osgar. Applicants therefore respectfully request the rejections of claims 25 and 26 be reconsidered and withdrawn.

Dependent Claims 6-12

Claims 6-12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Osgar in view of Bodicky, and further in view of U.S. Patent No. 3,878,977 to Carlisle ("Carlisle"). Claims 6-12 depend from present claim 1, and Carlisle does not cure the deficiencies of Osgar discussed above with respect to claim 1. Claims 6-12 are therefore patentable for at least the same reasons as discussed above with respect to claim 1.

Applicants therefore respectfully request that the rejections of these claims be withdrawn.

Independent claim 20 and dependent claims 22, 23, 27 and 28

Claims 20-22, 27 and 28 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,176,654 to Schreiber in view of Osgar. Claim 23 was rejected under 35 U.S.C. 103(a) as being unpatentable over Schreiber in view of Osgar and further in view of U.S. Patent No. 6,303,152 to Kief ("Kief"). Claim 27 has been cancelled, rendering its rejection moot.

Present claim 20 recites a flange that is a monolithic structure including the pierceable membrane and the guide passage. Osgar does not disclose or render obvious the recited monolithic structure. As discussed above with respect to present claim 1, pierceable membrane 60 and fitment 14 are not a single piece. Moreover, Osgar appears to disclose that the pierceable membrane 60 is joined to the cap not the fitment, with membrane 60 forming a seal with fitment 14 when cap is screwed down onto bottle 16. *See, e.g.*, Figs. 3 and 10, and col. 4, lns. 11-23 of Osgar. Thus, Osgar would not have suggested to one of ordinary skill to make fitment 14 of Osgar as a monolithic structure including membrane 60. Schreiber does not cure the deficiencies of Osgar with respect to claim 20. Kief also does not cure the deficiencies of Osgar. Moreover, the Examiner has not provided any explanation or rationale that would have prompted a person of ordinary skill in the relevant field to modify Osgar to arrive at the presently claim invention.

For at least the foregoing reasons, claim 20, and claims 21-23, 26 and 28 which depend therefrom, are patentable over the cited references. Applicants therefore respectfully request these rejections be reconsidered and withdrawn.

New Claim 30

New claim 30 depends from claim 20; therefore, this claim is patentable for at least the same reasons as discussed above with respect to claim 20. Moreover, claim 30 recites that a portion of the guide passage has a press fit for fitting said container onto a discharge connection member, and the pierceable membrane is arranged between the press fit of the guide passage and an interior chamber of the foil bag. As discussed above with respect to independent claim 19, Osgar does not disclose the claimed configuration. Oscar discloses a pierceable membrane disposed at mouth 22 of fitment 14. Assuming, *arguendo*, that lip 24 is a press fit, as alleged by the Examiner, then pierceable membrane 60 is disposed at mouth 22, *at the alleged press fit 24*. Also, even assuming, *arguendo*, that a press fit exists elsewhere along the neck 26 of fitment 14, then pierceable membrane 60 would be *above* such press fit and the interior chamber of the bag, and not arranged *between* a press fit and the interior chamber of the bag, as claimed.

For at least the foregoing reasons, Applicants therefore respectfully request new claim 30 be allowed.

Claims 31-36

New independent claim 31 recites a pierceable membrane "is disposed at an end of or within said end portion of said guide passage that extends into said interior chamber of said foil bag." None of the cited references disclose these features. In particular, as discussed above with respect to dependent claim 4, pierceable membrane 60 of Osgar is not at or within a guide passage end portion that *extends into* an interior chamber. Rather, in Osgar, the neck 26 of fitment 14 *extends outwardly* from the end of bag 12, and pierceable membrane 60 covers mouth 22 of fitment 14. Consequently, Osgar does not disclose a pierceable membrane that is disposed at or within an end portion that *extends into an interior chamber* of the bag, as provided by new claim 31. Applicants therefore respectfully request new claim 31, and new claims 31-36 which depend from claim 31, be allowed.

Other Matters

During the Interview, Examiner Zalukaeva indicated that the trademark names included in claim 24 should be removed. After review, Applicants respectfully disagree. In accordance with section 2073.05(u) of the M.P.E.P., "the presence of a trademark or trade name in a claim is not, per se, improper under 35 U.S.C. 112, second paragraph, but the claim should be carefully analyzed to determine how the mark or name is used in the claim." Accordingly, it is not believed that the trademarks in claim 24 are improper, and therefore claim 24 has not been amended herein.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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Date: Apr. 8, 2010

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